

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DENISE MCKEOWN and ROBERT LUTTS

*Plaintiffs*

v.

ADVEST, INC., et. al.

*Defendants*

Civil Action No.: 05-10176-RGS

Consolidated With

T. ROWE PRICE TAX-FREE HIGH YIELD  
FUND, INC. et al.

*Plaintiffs,*

v.

KAREN M. SUGHRUE, et. al.,

*Defendants.*

Civil Action No.: 04-11667 RGS

**T. ROWE PLAINTIFFS' MOTION TO VACATE DISMISSAL**

Pursuant to Fed.R.Civ.P. 59(e), Plaintiffs T. Rowe Price Tax-Free High Yield Fund, Inc., Smith Barney Income Funds/Smith Barney Municipal High Income Fund, Dryden National Municipals Fund, Inc., Lois and John Moore, and ACA Financial Guaranty Corporation (the "T. Rowe Plaintiffs") move to vacate the order of dismissal entered October 5, 2006 in the above captioned case. In support thereof, the T. Rowe Plaintiffs state as follows:

1. On October 5, 2006, this Court entered an order of dismissal, dismissing the action brought by the T. Rowe Plaintiffs, Civil Action No. 04-11667 RGS. Although in their opposition to the Defendants' motions to dismiss, the T. Rowe Plaintiffs requested leave to amend in the event

the Court found that the Plaintiffs had not met the steep pleading burden applicable to federal securities actions, the Court did not grant such leave.

2. Under the Federal Rules of Civil Procedure, when plaintiffs have the ability to state a viable cause of action based on the facts alleged in their case, their complaint should not be dismissed, but rather the Plaintiffs should be given leave to amend. Plaintiffs believe they can allege sufficient facts to meet the pleading requirements of the Private Securities Litigation Reform Act and should be permitted to amend their complaint. Plaintiffs have not previously amended their complaint to address the pleading deficiencies alleged by the Defendants in their motions to dismiss or those found by the Court in its Memorandum And Order On Defendants' Motions To Dismiss.

3. Where a complaint has been dismissed for failure to state a cause of action and the dismissed party desires the Court to consider an amended complaint, the proper procedural vehicle is for the party to move for leave to amend the complaint in conjunction with a motion to amend the complaint pursuant to Rule 15(a). Plaintiffs have filed a motion to amend contemporaneously with this motion.

4. As an additional ground, Plaintiffs have discovered new evidence which is relevant to this action. As described in the Affidavit of Thomas Hoffman In Support of T. Rowe Plaintiffs' Motion To Vacate Dismissal, this information was not available at the time the motions to dismiss were briefed.

5. In further support of this motion, Plaintiffs rely upon their Motion For Leave To File A Second Amended Complaint, their Memorandum in Support of Motion To Vacate Dismissal and For Leave To File A Second Amended Complaint, their proposed Second Amended Complaint,

which is attached as Exhibit A to the Motion For Leave, and the Affidavit of Thomas Hoffman In Support Of T. Rowe Plaintiffs' Motion To Vacate Dismissal.

WHEREFORE, for the reasons set forth herein and in the Plaintiffs' supporting memorandum, the Court should vacate the October 5, 2006 Order of Dismissal as to the T. Rowe Plaintiffs and grant them leave to file a second amended complaint.

By their attorneys,

**T. ROWE PRICE TAX-FREE HIGH  
YIELD FUND, INC., SMITH BARNEY  
INCOME FUNDS/SMITH BARNEY  
MUNICIPAL HIGH INCOME FUND,  
DRYDEN NATIONAL MUNICIPALS  
FUND, INC., LOIS and JOHN MOORE,  
and ACA FINANCIAL GUARANTY  
CORPORATION**

/s/ Michael Tabb

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Date: October 20, 2006

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 20, 2006

/s/ Michael Tabb